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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,741	10/17/2001	Matthew T. Scholz	54402US028	7855

7590 01/16/2003

Office of Intellectual Property Counsel
3 M Innovative Properties Company
PO Box 33427
St. Paul, MN 55133-3427

EXAMINER

EGAN, BRIAN P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/16/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/982,741

Applicant(s)

SCHOLZ ET AL.

Examiner

Brian P. Egan

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-3, 5-20, 23 and 24.

Claim(s) withdrawn from consideration: None

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 10.
10. ☐ Other: _____

Continuation of 2. NOTE: Claims 1 and 24 introduce the limitation that the stems and backing layer be integral with one another.

ADVISORY ACTION

1. Applicant's arguments filed January 6, 2003 have been fully considered but they are not persuasive.

2. The Applicant's proposed amendment, paper no. 11, has not been entered by the Examiner. The proposed amendment does not place the Applicant's claimed invention in condition for allowance. Furthermore, it necessitates a further search of the current state of the art thereby placing an undue burden upon the Examiner (pursuant to the Applicant's newly added claim limitation that the stems are integrally formed with the backing layer).

3. The Applicant's primary contention is that Crawley et al. (#5,948,707) fail to teach an aspect ratio of at least 1.25. The Examiner respectfully disagrees. The Applicant's remarks are directed at the height of the stems. Since the aspect ratio is dependent on both the height and width of the stems, even if one of ordinary skill in the art would conclude that the height is limited in the stems as taught by Crawley et al, there is nothing precluding the width of the stems from being modified – such modification is even suggested by Crawley et al. in the finding that the pattern of dots need not be substantially hemispherical in shape and that the pattern of dots may be of any desired shape including shapes such as generally described as squares, rectangles, polygons, shapes with pointed or sharp tips, and shapes with peaks and ridges. For example, a shape such as that with a sharp tip would be limited in width as opposed to its height, thereby increasing its aspect ratio. Furthermore, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to modify either the height or width of the stems since such a modification would have involved a mere change in the size of a component.

Art Unit: 1772

A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

The Applicant's further content that the backing film of the Crawley reference fails to teach the existence of micro-channels between the stems along at least a portion of the exterior of the first surface of the backing layer. The Examiner respectfully disagrees. As noted in the previous office action, the backing layer is water vapor permeable. Thus, microchannels would exist throughout the material layer, including the area along the exterior of the first surface of the backing layer, such that water vapors may escape through the channels.

Finally, although the Amendment has not been entered by the Examiner, the Examiner contends that the proposed Amendment fails to place the application in condition for allowance since the only proposed added limitation is that the stems and backing are integral. It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to have made the two layers integral since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). Furthermore, it should be noted that such newly present subject matter would require further consideration and/or search before a determination of allowability could actually be rendered.

Conclusion



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Egan whose telephone number is 703-305-3144. The examiner can normally be reached on M-F, 8:30-5.

Art Unit: 1772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

BPE
January 14, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

1/14/03